

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

ROBBIE JOE WELCH, #1750692 §  
VS. § CIVIL ACTION NO. 6:13cv577  
DIRECTOR, TDCJ-CID §

ORDER OF DISMISSAL

Petitioner Robbie Joe Welch, an inmate confined in the Texas prison system, proceeding *pro se*, filed the above-styled and numbered petition for a writ of habeas corpus challenging his Gregg County convictions for indecency with a child. The petition was referred to United States Magistrate Judge K. Nicole Mitchell, who issued a Report and Recommendation concluding that the petition for a writ of habeas corpus should be dismissed as time-barred.

The Petitioner has filed objections (docket entry #13) and a motion to recuse Magistrate Judge Mitchell (docket entry #14). He stressed that he consented to Magistrate Judge Judith K. Guthrie presiding over the case and argued that Magistrate Judge Mitchell is not a judge. However, Magistrate Judge Guthrie has retired and Magistrate Judge Mitchell is her replacement. The objection lacks merit. He also argued that a limitations defense should be raised by a respondent, however, the Supreme Court has ruled that a court may *sua sponte* dismiss a petition as time-barred upon notice. *Day v. McDonough*, 547 U.S. 198, 210 (2006). The Petitioner was provided the requisite notice, and the objection lacks merit. Finally, the Petitioner argued that he is entitled to equitable tolling. He disputed the conclusion that he was not diligent in pursuing his rights. However, he is not entitled to equitable tolling for reasons explained in the Report and Recommendation. The petition is time-barred.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Petitioner to the Report, the Court is of the

opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of the Petitioner are without merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

**ORDERED** that the petition for a writ of habeas corpus is **DENIED** and the case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**. All motions not previously ruled on are hereby **DENIED**.

**So ORDERED and SIGNED this 18th day of September, 2013.**

A handwritten signature in black ink, appearing to read "LEONARD DAVIS", is written over a horizontal line. The signature is fluid and cursive, with a large loop on the left and a smaller loop on the right.

**LEONARD DAVIS  
UNITED STATES DISTRICT JUDGE**